HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT APPEAL NO.796 OF 2006

BETWEEN

Ch. Vasudeva Rao

.....

Appellant

And

The State of Andhra Pradesh
Rep. by Additional Director General of Police,
Hyderabad & others

.....Respondents

:: JUDGMENT ::

Counsel for the Appellant: Shri Sriram

Counsel for the Respondents: Government Pleader for Home

Dated: 28.07.2006

Per G.S. SINGHVI, CJ

The ambit and reach of the power vested in the High Courts under Article 226 of the Constitution of India is very wide.

Under Article 226 of the Constitution, the High Court can issue orders or directions or writs including the one in the nature of mandamus, certiorari, prohibition, quo-warranto and habeas corpus for protecting the legal and constitutional rights of individuals and for undoing injustice done to any person. The limitations applicable to English Courts, which are entrusted with the power to issue prerogative writs, are not applicable to the High Courts in India. This was highlighted by the Supreme Court in **Dwaraka Nath v. Income Tax Officers**[1] in the following words:

> "Article 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. A wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised was designedly used by the Constitution. The High Court can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", which expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. The High Courts are enabled to mould the reliefs to meet the peculiar and complicated requirements of this country. To equate the scope of the power of the High Court under Article 226 with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction would defeat the purpose of the article itself. But this does not mean that the High Courts can function arbitrarily under this Article. There are some limitations implicit in the article and others may be evolved to direct the article through defined channels."

The power of judicial review vested in the High Court under Article 226 of the Constitution of India has been further expanded by the judgments of the Supreme Court in **Maneka Gandhi v. Union of India**[2], **Anandi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust v. V.R.Rudani**[3] and **Zee Telefilms Ltd. v. Union of India**[4].

Likewise, the ambit and reach of the High Court's inherent powers under Section 482 of the Code of Criminal Procedure, 1973 (for short, the Cr.P.C.') to pass appropriate orders to give effect to any order made under the Cr.P.C or to prevent abuse of the process of any court or otherwise to secure the ends of justice is also very wide. In **R.P.Kapur v. State of Punjab**[5] the Supreme Court considered the question whether in exercise of its power under Section 561A of the Code of Criminal Procedure, 1898 (Section 482 Cr.P.C. is pari materia to Section 561A of the 1898 Code), the High Court could quash criminal proceedings registered against the appellant who along with his mother-in-law was accused of committing offences under Section 420, 109, 114 and 120B of the Indian Penal Code. The appellant unsuccessfully filed a petition in the Punjab High Court for quashing the investigation of the First Information Report (FIR) registered against him and then filed appeal before the Supreme Court. While confirming the High Court's order, which had refused to quash the report submitted by the police under Section 173 Cr.P.C., the Supreme Court laid down the following proposition:

> "The inherent power of High Court under Section 561A, Criminal P.C. cannot be exercised in regard to

matters specifically covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction."

The Supreme Court then carved out the following categories of cases in which the inherent jurisdiction could be exercised by the High Court:

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings in respect of the offences alleged. Absence of the requisite sanction may, for instance, furnish cases under this category;

(ii) Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not;

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and

> cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

In **State of Haryana v Bhajanlal**[6], the Supreme Court considered the scope of the High Court's power under Section 482 of Cr.P.C and Article 226 of the Constitution to quash the FIR registered against the respondent, referred to several judicial precedents including those of **R.P.Kapoor v. State of Punjab** (supra), **State of Bihar v. J.A.C. Saldanha**[7] and **State of West Bengal v. Swapan Kumar Guha**[8] and ruled that the High Court should not embark upon an enquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. The Supreme Court also identified the cases in which power under Article 226 of the Constitution or Section 482 Cr.P.C. could be used for quashing the proceedings. These are:

> "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by

police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In **State of Bihar v. P.P.Sharma**[9], a two Judges Bench of the Supreme Court comprising of Kuldip Singh and K.Ramaswamy, JJ in their separate but concurring opinion disapproved judicial intervention in the investigation of criminal cases. Kuldip Singh, J expressed his opinion in the following

words:

> "When the information is lodged at the police station and an offence is registered, the mala fides of the information would be of secondary importance. It is the material collected during the investigation which decides the fate of the accused person. The question of mala fide exercise of power assumes significance only when the criminal prosecution is initiated on extraneous considerations and for an unauthorized purpose. "

K.Ramawamy, J observed as under:

> "Entertaining the writ petitions against charge-sheet and considering the matter on merit on the guise of prima facie evidence to stand an accused for trial amounts to pre-trial of a criminal trial under Article 226 and 227 even before the competent Magistrate or the Sessions Court takes cognizance of the offence. The charge-sheet and the evidenced placed in support thereof form the base to take or refuse to take cognizance by the competent court.
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> Expeditious trial of a criminal case is the cardinal rule. Delay feeds injustice to social order and entertaining writ petitions would encourage to delay the trial by diverse tricks. It is not to suggest that under no circumstances a writ petition should be entertained. But an accused with a view to delay the trial, resorts to writ proceedings, raises several contentions including one on merit and have the proceedings kept pending. The result would be that the people would lose faith in the efficacy of rule of law."

In large number of other judgments, the Supreme Court has repeatedly cautioned the High Courts against entertaining of the petitions filed under Article 226 of the Constitution or Section 482 Cr.P.C. for quashing the FIR or complaint and observed that the judicial process should not be allowed to be used for frustrating the investigation of crimes and prosecution of those who are accused of committing crimes. We do not want to burden

this judgment with plethora of judicial precedents, but deem it proper to mention a few. In **State of Maharashtra v. Ishwar Piraji Kalpatri**[10] the Supreme Court held that if a prima facie case is made out on the basis of allegations made in the complaint, then the High Court cannot quash the proceedings on the ground of mala fides or animus of the complainant or prosecution.

In **State of Karnataka v. M.Devendrappa**[11], the Supreme Court recognized the necessity of protecting the innocent citizens against harassment caused due to registration of frivolous criminal cases, but also emphasized that the High Court should exercise judicial restraint and avoid interlocutory interventions in the investigation and trial of criminal cases. The propositions laid down in that case are as under:

> "1) It is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The inherent

power should not be exercised to stifle a legitimate prosecution.

2) The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. Court must be careful to see that its decision in exercise of this power is based on sound principles. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with.

3) In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.

4) When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegation of mala fides against the informant is of no consequence and cannot by itself be the basis for quashing the proceedings."

In **A.V.Mohan Rao v. M.Kishan Rao**[12] the Supreme Court considered the correctness of order passed by this Court refusing to quash the summons issued against the appellants by the Special Judge for Economic Offences, Hyderabad. The facts of that case shows that respondent No.1 filed a complaint in the Court of Special Judge, Economic Offences at Hyderabad with the allegation that accused persons by making false, deceptive and misleading statements and by suppressing facts induced various persons to pay them money for purchase of shares of the Power Company; raised millions of dollars from Non-Resident Indians (NRIs); siphoned off the money into bogus companies exclusively owned by them and purchased shares of the Power Company in India in the names of bogus offshore companies owned and controlled by them. According to the complainant, all this came to his notice when some of the prospective NRI investors made correspondence with the Power Company demanding share certificates for which they had paid substantial amounts to the accused. The complainant alleged that the accused had committed fraud on the Power Company in whose name they collected money and invested the same in their own companies. The Special Judge for Economic Offences, Hyderabad issued summons to the accused persons requiring them to appear before

the Court. On receipt of the summons, the appellants filed petition under Section 482 Cr.P.C. This Court refused to quash the proceedings. While approving the order of the High Court, the Supreme Court referred to the earlier judgments in **State of Bihar v. Murad Ali Khan**[13] , **State of Haryana v. Bhajan Lal** (supra), **Mahavir Prasad Gupta v. State of National Capital Territory of Delhi**[14] and held:

> "Reading of the complaint petition and the materials produced by the complainant with it in the light of provisions in the aforementioned sections, it cannot be said that the allegations made in the complaint taken in entirety do not make out, even prima facie, any of the offences alleged in the complaint petition. We refrain from discussing the merits of the case further since any observation in that regard may affect one party or the other. The allegations made are serious in nature and relate to the Power Company registered under the Act having its head office in this country. Whether the appellants were or were not citizens of India at the time of commission of the offences alleged and whether the offences alleged were or were not committed in this country, are questions to be considered on the basis of the evidence to be placed before the Court at the trial of the case. The questions raised are of involved nature, determination of which requires enquiry into facts. Such questions cannot be considered at the preliminary stage for the purpose of quashing the complaint and the proceeding initiated on its basis."

In **State of Orissa v. Saroj Kumar Sahoo**[15] the Supreme Court reviewed various judicial precedents on the subject and laid down the following propositions:

> "1) The exercise of power under Section 482 CrPC is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of

CrPC. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under CrPC, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise.

2) While exercising the powers under Section 482 Cr.P.C., the High Court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

3) The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which such power can be exercised can be laid down."

The ratio of the above noted judgments is that in exercise

of its powers under Article 226 of the Constitution or Section 482 of Cr.P.C., the High Court should be extremely slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of any offence or that the allegations contained in the FIR do not constitute any cognizable offence or that the prosecution is barred by law. In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have the right to see that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed under Article 226 of the Constitution or Section 482 Cr.P.C., for quashing the FIR or complaint or restraining the competent authority from investigating the allegations contained in the FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in the FIR or complaint discloses commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of the FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of the FIR or complaint. Such a course will result in

miscarriage of justice and would encourage those accused of committing crimes to repeat the same. Interim orders passed by the High Court in such matters, as a matter of course, have great adverse impact on the society. Those accused of committing crimes get emboldened and majority of citizens are forced to think that the judicial process can be used and abused by the law breakers to their advantage.

We have prefaced disposal of this appeal filed by the appellant for setting aside order dated 6-3-2006 passed by the learned Single Judge in Writ Petition No.14168 of 2005 because, after hearing learned counsel for the parties and perusing the record, we are convinced that the learned Single Judge did not commit any error by refusing to entertain the appellant's prayer for quashing the proceedings of Criminal Case No. 149 of 1999 registered by I Town Police Station, Kadapa.

A perusal of the record shows that the appellant is working as District Treasury Officer, Kadapa. While he was posted as Senior Accountant in the office of Deputy Director, District Treasury Office, Kadapa, a complaint was received that certain forged documents have been created for withdrawing pension. Thereupon, the Deputy Director concerned lodged FIR at I Town Police Station, Kadapa. This resulted in registration of Crime No.149 of 1999 under Sections 420, 468 and 471 of the Indian Penal Code against Sarvasri S. Prem Kumar, Sohandas and Raj Kumar Singh, who claimed pension on the basis of forged documents. Subsequently, the matter was transferred to the Inspector of Police, CBCID, Tirupathi, Chittoor for investigation. During the course of investigation, the officer concerned recorded the statements of the Deputy Director concerned and the

appellant. The appellant stated that he is only a forwarding officer and has nothing to do with the fraudulent withdrawal of pension. However, in the report submitted by the Inspector of Police before the Magistrate concerned, the appellant's name was also included as an accused. Immediately thereafter, the appellant applied for anticipatory bail, which was granted by the competent court on 24-9-2002.

In the meanwhile, the State Government ordered departmental enquiry into the allegation of withdrawal of pension on the basis of forged documents. The enquiry officer submitted report dated 22-12-2000 with an observation that the appellant was guilty of certain procedural lapses. The government accepted the enquiry report and issued show cause notice to the appellant on 18-12-2003. However, no final order has so far been passed apparently because of pendency of investigation of Crime No.149 of 1999.

In the writ petition filed by him, the appellant prayed for quashing the proceedings of Crime No.149 of 1999 by contending that the abnormal delay in finalization of the investigation has caused serious injury to him and has also resulted in violation of his constitutional right guaranteed under Article 21 of the Constitution.

The learned Single Judge made detailed reference to the factual matrix of the case and recorded an unequivocal conclusion that the writ petitioner's cause has not been prejudiced on account of the so-called delay in finalization of the prosecution. The learned Single Judge also noted the fact that as per memo dated 28.02.2004 issued by Additional Director General of Police (CID), Section 13(1) (c) (d) of the Prevention of Corruption Act, 1988 is

proposed to be added qua the writ petitioner and refused to issue direction for quashing the proceedings.

We entirely agree with the learned Single Judge that the petitioner has failed to make out a case for exercise of power by this Court under Article 226 of the Constitution of India. We may add that while the Courts would protect rights of the citizens and pass appropriate order on being convinced that the right of the police to investigate the offence or prosecute a person is being abused, the Courts will also take care of the fact that those who commit crime are brought to book and adequately punished. Interference by the Court at the threshold of investigation not only frustrates the process initiated by the competent authority but at times results in a situation in which the persons committing crime go scot-free on account of loopholes which occur on account of delay caused as a result of pendency of cases before the superior courts. We can take judicial notice of the fact that a large number of petitions instituted in various High Courts in the country remain pending for two to six years. This long interregnum results in virtual frustration of the investigation. By the time the petition is decided by the High Court, most of the evidence is lost. The officer, who initiates the investigation, is transferred on more than one occasion and the whole purpose of registering the case is frustrated.

In the present case, the appellant was arrayed as accused only in September 2002. Therefore, as on the date of filing the writ petition, the investigation had remained pending qua him only for a period of two years. During the course of hearing, learned counsel for the appellant admitted that his client has not been summoned by the police so far. We fail to see how his cause has at all been

prejudiced on account of the delay in the conduct of investigation. Rather, the delay has benefited him and others who are accused of committing crime and defrauding the public.

With the above observations, the appeal is dismissed. However, in order to ensure that the investigation is not delayed any more, we direct that if investigation has not already been completed, the concerned authority must complete it within a period of two months from today.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

28.07.2006

ksld/svs

Note:
The Court Officer is directed to give an attested
Copy of this judgment to the Government Pleader
for being forwarded to the concerned authorties.
(By order)
svs
PS to HCJ

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[1] AIR 1966 SC 81
[2] AIR 1978 SC 597
[3] AIR 1989 SC 1607
[4] AIR 2005 SC 2677 = (2005) 4 SCC 649
[5] AIR 1960 SC 866
[6] 1992 Supp (1) SCC 335
[7] (1980) 1 SCC 554
[8] (1982) 1 SCC 561
[9] (1992) Supp. 1 SCC 222
[10] (1996) 1 SCC 542
[11] (2002) 3 SCC 89
[12] (2002) 6 SCC 174
[13] (1988) 4 SCC 655

[14] (2000) 8 SCC 115

[15] (2005) 13 SCC 540